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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,795	01/03/2002	John A. Krueger	SPEC - 6137	6948
7590 Kimberly C. Diliberti Allegiance Corporation 1430 Waukegan Road McGaw Park, IL 60085			EXAMINER FOREMAN, JONATHAN M	
			ART UNIT 3736	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE 3 MONTHS		MAIL DATE 04/03/2007	DELIVERY MODE PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

ED

Office Action Summary	Application No. 10/037,795	Applicant(s) KRUEGER, JOHN A.	
	Examiner Jonathan ML Foreman	Art Unit 3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-14 is/are allowed.
- 6) ☒ Claim(s) 6-11 is/are rejected.
- 7) ☒ Claim(s) 15 and 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The Declaration of John A. Krueger filed on 12/26/06 under 37 CFR 1.131 is sufficient to overcome WO 01/78590 A1 to Clark et al.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 6 – 11 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,919,172 to Golba, Jr.

In regards to claims 6 – 11, Golba, Jr., discloses a system having an outer cannula (40); a handle portion (proximal region of 40) coupled to the end of the outer cannula; the outer cannula is adapted to removably accommodate a biopsy aspiration device therein (Col. 5, lines 6 – 8). The aspiration device includes an elongated cannula body (12) having a proximal end (14), a distal tip (16) and a linear longitudinal axis, wherein a length of the elongated cannula body is greater than a length of the outer cannula; a lumen (18) running longitudinally through the interior of the cannula body. The aspiration device includes a distal tip (16) and a laterally oriented distal opening (22) adjacent to the tip, the distal tip includes an arcuate curved surface originating on the opposite side to the laterally oriented distal opening (22) and terminating at the distal-most point of the distal opening. The proximal end of the cannula body comprises a luer attachment (20) for removable coupling of an aspiration source (Col. 3, lines 55 – 56). Golba, Jr. discloses a stylet (36) for

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removable insertion within the outer cannula. Golba, Jr. discloses the proximal end of the device including viewable indicia (21, 39) indicating the position of the laterally oriented distal opening.

Response to Arguments

4. Applicant's arguments filed 12/26/06 have been fully considered but they are not persuasive. Applicant asserts that Golba, Jr. fails to disclose a length of the elongated cannula body being greater than a length of the outer cannula. However, the Examiner disagrees.. The claim merely requires “a length” of the cannula body being greater than “a length” of the outer cannula. The claim does not specify that the length is the overall length or a length from the proximal to distal ends of the cannulas. As such, the Examiner considers “a length” of the outer cannula to be a quarter of the outer cannula and to be the entire length of the elongated cannula body. As such, Golba, Jr. discloses a length (i.e. entire length) of the elongated cannula body being greater than a length (i.e. one quarter of the overall length) of the outer cannula.

Allowable Subject Matter

5. Claims 12 – 14 are allowed. Claims 15 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on

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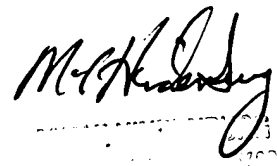
the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan ML Foreman whose telephone number is (571)272-4724. The examiner can normally be reached on Monday - Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


JMLF


Max Hindenburg
Supervisor